IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 390 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LEE & MUIRHEAD LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 390 of 2004

MR DC DAVE for Petitioner No. 1-2

MS. MITA PANCHAL APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 29/06/2004

ORAL JUDGEMENT

Rule. Ms. Mita Panchal, learned APP appears and waives service of notice of rule on behalf of respondent No.1 State.

2. By filing this petition under Articles 226 and 227 of the Constitution, the petitioners have prayed to quash and set aside the order dated 17.1.2004 passed by the learned Additional Sessions Judge, Jamnagar in Misc. Criminal Application No.312 of 2003 by which the application filed by the petitioners for unconditional release of the goods in question alongwith container i.e., 16 Mt. of Propylene granules (homopolymer grade) contained in 640 bags, each bag containing 25 Kgs. goods, has been rejected.

3. Petitioner No.1 carries on the business of service provider for export of goods whereas petitioner No.2 carries on the business of manufacturing and selling petrochemicals.

4. On 2.9.2002 petitioner No.2 had entrusted to petitioner No.1, 16 Mt. of Propylene granules (homopolymer grade) contained in 640 bags, each bag containing 25 Kgs. goods for the purpose of export to a buyer viz., M/s. Polyman Limited in Bangladesh. Petitioner No.2 loaded the goods in a container bearing No.GATU 1142098 to a transport operator viz., M/s. Kutch Carriers having their office at Gandhidham, Gujarat for transportation from its factory at Jamnagar to the port at Kandla. The said transport operator was carrying the container loaded with the goods in a truck bearing No.GJ 12 W 7042.

5. The dead bodies of the driver and cleaner were found on September 5, 2002 and September 9, 2002 respectively at two different places. The truck was not found at that place. The container and the goods loaded therein were found abandoned and seized by the police personnel, Jodia Police Station and the police registered an offence under section 302 of IPC being CR No.I-62 of 2002. The offenders are not traced out by the police till today.

6. The petitioners had preferred an application for recovery of the muddamal before the learned JMFC, Jodia which came to be rejected on 27.11.2002. Aggrieved thereby the petitioners have filed Criminal Revision Application No.137 of 2002 before the learned Additional Sessions Judge, Jamnagar. The said application came to be allowed by the learned Additional Sessions Judge, Jamnagar vide order dated 7.1.2003 and direction was issued to release the goods. Since there was no mention in the judgment and order of the learned Additional Sessions Judge, Jamnagar dated 7.1.2003 for releasing the

container, the petitioners had moved another application being Criminal Revision Application No.3 of 2003 which also came to be allowed on certain terms and conditions mentioned therein by the learned Additional Sessions Judge, Jamnagar vide judgment and order dated 4.3.2003. Thereafter the petitioners had moved an application being Misc. Criminal Application No.312 of 2003 for disposal of the property (muddamal) pending trial under Section 451 of the Code of Criminal Procedure ('the Code' for short). The said application was moved on 30.7.2003 and the same came to be rejected by the learned Additional Sessions Judge, Jamnagar vide judgment and order dated 17.1.2004 which has given rise to the present petition.

7. Mr. Dhaval Dave, learned advocate of the petitioners, contended that the goods and container are not subject matter of the crime registered against unknown persons for commission of the alleged offence under Section 302 of IPC for causing murder of driver and cleaner. He therefore submits that the goods loaded in the container is subject to deterioration if the material is not allowed to be disposed of. In support of the aforesaid contention, affidavit of chemical analyser is also produced vide Annexure B to the petition. He therefore urged that prayer made in Criminal Misc. Application No.312 of 2003 deserves to be granted and thereby petitioners be permitted to dispose of the said goods unconditionally. He therefore urged to allow the petition.

8. Ms. Mita Panchal, learned APP appearing for respondent No.1 State has contended that the present muddamal for which relief is prayed is recovered in connection with an offence of murder and till today offenders are not traced out and therefore it is not in the fitness of things to grant the prayer made by the petitioners and to release the muddamal unconditionally and to permit them to dispose of the muddamal. She further contended that when the learned Additional Sessions Judge has already granted interim custody of the muddamal in their favour vide order dated 7.1.2003 and 4.3.2003 as per the said order, the petitioners are bound to preserve the said muddamal till the trial is over. If this Court feels that the prayers made by the petitioners deserve to be granted then the petitioners must be put to certain terms and conditions by way of asking them to deposit certain amount or to furnish bank guarantee or to file solvent surety or to give an undertaking to this Court. She therefore urged to pass appropriate orders looking to the facts and circumstances emerging from the record of the case.

9. I have given my anxious considered thought to the rival contentions of the learned advocates of the parties. I have also perused the averments made in the petition and the impugned order dated 17.1.2004 passed by the learned Additional Sessions Judge, Jamnagar in Criminal Misc. Application No.312 of 2003 by which relief claimed by the petitioners to unconditional release of the muddamal and to permit them to dispose of the same has been rejected.

10. There is no manner of dispute that the petitioner No.2 is the owner of the muddamal which was entrusted to petitioner No.1 for the purpose of export to a buyer at Bangladesh. Petitioner No.2 loaded the said goods in a container bearing No.GATU 1142098 of a transport operator M/s. Kutch Carriers having their office at Gandhidham for transportation from its factory at Jamnagar to the Port at Kandla. The said transport operator was carrying the said container loaded with the goods in a truck bearing No.GT 12 W 7042. The dead bodies of the driver and cleaner of the said truck were found on September 5, 2002 and September 9, 2002 respectively at two different places and therefore crime was registered for the offence under section 302 of IPC and the said truck together with container was found in an abandoned condition. Police has seized the same by way of muddamal.

11. The question that arises for consideration of this Court is as to whether the petitioners are entitled to get back this muddamal under Section 451 of the Code by way of unconditional release with permission to dispose of the same during the pendency of the trial.

12. It may be noted that till today nobody has claimed that they are the owners of the muddamal except petitioner Nos.1 and 2. It can also be noticed that dead body of the driver and cleaner who were on duty at the relevant time were found during the course of the transportation. That fact itself cannot lead to the conclusion that the muddamal contained in the container is seized in connection with the offence of murder. It has nothing to do with the murder. During the course of the investigation, Section 394 of the IPC is also added. However, till today the police has not collected any evidence as to who has caused voluntary hurts in committing robbery. The facts remain that this muddamal is not at all required during the course of the trial of murder if offenders are traced out.

13. On seeing the affidavit sworn by Shailesh Nigam

it can be gathered that non-using of such product for such a long time is likely to deteriorate its quality and it is not likely to be producing desired quality products, which it is expected to deliver. Such deterioration shall continue with passage of time. From this affidavit it is clear that the muddamal is a perishable commodity and is subject to deterioration.

14. So far as Section 451 of the Code is concerned, it empowers a magistrate to pass order for custody and disposal of the property pending trial in certain cases. On having perusal of the said provisions, there is no manner of doubt that since the muddamal article is subject to speedy deterioration and non-using of such product for a long time is likely to deteriorate its quality, the muddamal alongwith the container is required to be handed over to the petitioners by way of unconditional release for disposal on certain terms and conditions.

15. Seen in the above context, the order dated 17.1.2004 passed by the learned Additional Sessions Judge, Jamnagar in Misc. Criminal Application No.312 of 2003, rejecting the application of the petitioners, deserves to be quashed and set aside and the said application deserves to be allowed and thereby unconditionally releasing the muddamal viz., 16 Mt. of Propylene granules (homopolymer grade) contained in 640 bags, each bag containing 25 Kgs., goods with container permitting the petitioners to dispose of the same.

16. For the foregoing reasons, the petition succeeds and accordingly it is allowed. Order dated 17.1.2004 passed by the learned Additional Sessions Judge, Jamnagar, in Misc. Criminal Application No.312 of 2003, is hereby quashed and set aside and Misc. Criminal Application No.312 of 2003 on the file of the learned Additional Sessions Judge, Jamnagar is hereby allowed. Resultantly, the muddamal viz., 16 Mt. of Propylene granules (homopolymer grade) contained in 640 bags, each bag containing 25 Kgs., goods with container is released unconditionally and the petitioners are permitted to dispose of the muddamal articles alongwith container which were released by the learned Additional Sessions Judge, Jamnagar, subject to the petitioners filing an undertaking before this Court to the effect that if in future anybody claims ownership over the muddamal goods and/or container and proves his/its case, any monetary liability that may arise would be exclusively of the petitioners and State Government will not be held responsible for it, in other words, the petitioners will

compensate or reimburse the claim to the claimant if in future anybody stakes claim over the muddamal goods and/or container and establishes his/its case.

17. Authorised Officers of both the petitioners shall file an undertaking to the aforesaid effect within a period of two weeks hereof and on such undertaking being filed by them, the muddamal shall be released unconditionally with with permission to the petitioners to dispose of the same.

Rule is accordingly made absolute.

(A.M. Kapadia, J.)

(karan)